



# CITY OF YONKERS *POLICE DEPARTMENT*

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## MEMORANDUM

TO: All Commands, Precincts, Units and Divisions

FROM: Police Commissioner Charles Gardner

DATE: January 11, 2019

SUBJECT: **Low-level Marijuana Offenses – Interim Procedures**

The Westchester County Office of the District Attorney has announced changes in the handling of “low-level” marijuana offenses. These changes, which are described in more detail below, become effective January 14, 2019.

The District Attorney’s office will no longer prosecute (i) the violation offense in Penal Law 221.05, unlawful possession of marijuana, and (ii) the B misdemeanor offense in Penal Law 221.10 (2), criminal possession of marijuana in the fifth degree, based on the possession of an aggregate weight of more than twenty-five grams, provided the person is only charged with those offenses;

The District Attorney’s Office will prosecute the B misdemeanor offense in Penal Law 221.10 (1) only as a violation (under Penal Law 221.05 for the unlawful possession of marijuana) when a person possesses, in a public place, burning or publically viewable marijuana, provided the person is only charged with this offense.”

As a result of the new changes, all department members are directed to follow the below procedures regarding the enforcement of the aforementioned Marijuana offenses.

In situations where the only charge is the violation of Penal Law 221.05, unlawful possession of marijuana, or the B misdemeanor offense in Penal Law 221.10 (2), criminal possession of marijuana in the fifth degree, based on the possession of an aggregate weight of more than twenty-five grams. Department members shall:

- Seize the alleged marijuana.
- Obtain pedigree information from the person in possession of the alleged marijuana.
- Conduct a warrant check
- If there are no warrants or other charges – release the individual

- Property clerk the marijuana as evidence
- Prepare a report listing the corresponding penal law charge (221.05 or 221.10-2).
- In the narrative of the report the officer should indicate “the suspect was released as the Westchester County District Attorney will no longer prosecute **“221.05 or 221.10 (2)”**”

Officers who encounter individuals in violation of the B misdemeanor offense in Penal Law 221.10 (1) where a person possesses, in a public place, burning or publically viewable marijuana shall:

- Seize the alleged marijuana and arrest the suspect.
- The suspect will be booked and charged with the Misdemeanor 221.10
- Reports written by our officers will reflect the appropriate NYS penal law charge. Officers shall be guided by the Office of the District Attorney as to the appropriate filing of charges at the time of arraignment.

The new procedures implemented by the District Attorney shall not apply in instances where **there are other charges** (excluding City Ordinance Violations) associated with summary arrest of the individual.

It should also be noted that there are no changes in the arrest and prosecution of other marijuana offenses, including Criminal Possession of Marijuana 4<sup>th</sup> degree (221.15), based upon the possession of an aggregate weight of more than 2 ounces.

This is intended as an interim procedure and will remain in effect until such time a more detailed or amended procedure is disseminated.

Commanding officers are directed to ensure compliance with the above procedure.

  
Charles Gardner  
Police Commissioner

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